IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

Crl.MC.No. 3728 of 2006()

CRIME NO.429/06 OF THE PALARIVATTOM POLICE STATION

PETITIONER: ACCUSED

NALAKATH SALAHUDDIN, S/O.NALAKATH MUHAMMED,
AGED 52 YEARS, RESIDING AT NALAKATH HOUSE,
NEAR CHOLAKULAM, P.O.PATTAMBI, COURT ROAD,
PALAKKAD DISTRICT, KERALA.

BY ADV. SRI.M.K.DAMODARAN (SR.)
SRI.P.K.VIJAYAMOHANAN
SRI.SOJAN MICHEAL

RESPONDENTS: STATE AND DEFACTO COMPLAINANT

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1. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM,
(SUB INSPECTOR OF POLICE,
PALARIVATTOM POLICE STATION).

2. THE NATIONAL BANK OF RAS AL-KHAIMATH
(P.S.C.),REG.OFF.AT P.O.BOX 5300,RAS AL-KHAIMATH,
U.A.E.,REP. BY ITS AUTHORIZED AGENT AND P/A.HOLDER
MR.C.M.RAMACHANDRAN,M.D.,M/S.FINTRESTLE PVT.LTD.,
3RD FLOOR,APPLE TOWER,N.B.BYEPASS,PALARIVATTOM,
EDAPPALLY, P.O.COCHIN-24.

BY PUBLIC PROSECUTOR SRI.PUZHAKKARA MUHAMMED.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3728 OF 2006

Dated this the 27th day of November, 2006

ORDER

Against the petitioner, a private complaint has been filed before the learned Judicial Magistrate of the First Class-I, Ernakulam, and the learned Magistrate has referred the complaint to the police under Sec.156(3) of the Cr.P.C. A crime has been registered. Investigation is in progress.

2. The short contention of the learned counsel for the petitioner is that the allegations against the petitioner, even if accepted in toto, can reveal only alleged breach of a civil obligation. Even if the entire allegations were accepted, there is no incidents or elements of the offence of cheating. It is, in these circumstances, prayed that resort to the criminal adjudicatory process is nothing but an attempt to subject the petitioner to vexation and to compel him to yield to unreasonable demands. It is, in these circumstances, prayed that the crime registered may be quashed and all further investigation may be proscribed.

3. The learned Public Prosecutor submits that proper

investigation is being conducted. There is no reason to apprehend that the Investigator would in any way vex or harass the petitioner. A complaint has been received. Investigation is in progress. Necessary action in accordance with law alone shall be taken.

4. I have been taken through the averments in the complaint by the learned counsel for the petitioner. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations or even the question whether the allegations, if accepted, would reveal any criminal offence. Suffice it to say that I am satisfied that subject to appropriate safeguards which would allay the apprehension of the petitioner that he will be subjected to vexation and harassment, the police can be permitted to continue with the investigation and file a final report – positive or negative after completion of the investigation. I find merit in the submission that the petitioner does not deserve to be subjected to the trauma of arrest and detention. I am satisfied that issue of appropriate direction under Sec.438 of the Cr.P.C. to safeguard the interests of the petitioner shall serve the interests of justice ideally.

5. In the result:

(a) This Crl.M.C. is allowed in part.

(b) The police is permitted to expeditiously complete the investigation and file a final report.

(c) Following directions are issued under Sec.438 of the Cr.P.C. in favour of the petitioner:

(i) The petitioner shall appear before the learned Magistrate having jurisdiction at 11 a.m. on 4/12/2006. He shall be released on bail on condition that he executes a bond for Rs.25,000/- with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m. and 4 p.m. on 5/12/2006 and thereafter as and when directed by the Investigating Officer in writing to do so.

(iii) If the petitioner were arrested prior to his surrender before the learned Magistrate as directed in clause (i) above, he shall be released on condition that he executes a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate as directed in clause (i) above.

(iv) If the petitioner does not appear before the learned Magistrate as directed in clause (i) above, directions issued above shall thereafter lapse and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge